

Adopted Rejected

# COMMITTEE REPORT

YES: 11  
NO: 0

## MR. SPEAKER:

Your Committee on Natural Resources, to which was referred House Bill 1291, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1 Page 4, between lines 6 and 7, begin a new line block indented and
- 2 insert:
- 3 **"(24) Any act or omission rendered in connection with a**
- 4 **request, investigation, assessment, or opinion provided under**
- 5 **IC 36-9-28.7.**
- 6 SECTION 2. IC 36-9-28.7 IS ADDED TO THE INDIANA CODE
- 7 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 8 JULY 1, 2011]:
- 9 **Chapter 28.7. Storm Water Nuisances**
- 10 **Sec. 1. (a) As used in this chapter, "artificial conveyance" means**
- 11 **a manmade structure in or into which storm water runoff or**
- 12 **floodwaters flow, either continuously or intermittently.**
- 13 **(b) The term includes piping, ditches, swales, curbs, gutters,**
- 14 **catch basins, channels, storm drains, downspouts, roadways, and**
- 15 **any other structure using a similar method.**
- 16 **Sec. 2. As used in this chapter, "channel" means a part of a**

1       **natural watercourse or artificial conveyance that:**

- 2               **(1) periodically or continuously contains moving water; and**  
 3               **(2) has a defined bed and banks that serve to confine the**  
 4               **water.**

5       **Sec. 3. As used in this chapter, "runoff" means the part of**  
 6       **precipitation that flows from a drainage area on the land surface,**  
 7       **in open channels, or in storm water conveyance systems.**

8       **Sec. 4. As used in this chapter, "storm water conveyance**  
 9       **system" means all methods, natural or manmade, used for**  
 10       **conducting storm water to, through, or from a drainage area to**  
 11       **any of the following:**

- 12               **(1) Conduits and appurtenant features.**  
 13               **(2) Canals.**  
 14               **(3) Channels.**  
 15               **(4) Ditches.**  
 16               **(5) Storage facilities.**  
 17               **(6) Swales.**  
 18               **(7) Streams.**  
 19               **(8) Culverts.**  
 20               **(9) Roadways.**  
 21               **(10) Pumping stations.**

22       **Sec. 5. As used in this chapter, "storm water nuisance" means**  
 23       **a condition:**

- 24               **(1) that arises out of or is related to storm water that is**  
 25               **transferred through runoff or an artificial conveyance that:**  
 26                       **(A) is directed to the property of another person;**  
 27                       **(B) discharges storm water at or near the property line of**  
 28                       **another person; or**  
 29                       **(C) accelerates or increases the flow of storm water onto**  
 30                       **another person's property; and**  
 31               **(2) to which one (1) or both of the following apply:**  
 32                       **(A) The condition is injurious to health.**  
 33                       **(B) The condition substantially obstructs the free use of**  
 34                       **property.**

35       **Sec. 6. As used in this chapter, "swale" means an elongated**  
 36       **depression in the land surface that:**

- 37               **(1) is at least seasonally wet;**  
 38               **(2) is usually vegetated;**

- 1           **(3) is a conduit for storm water flow; and**
- 2           **(4) conducts storm water into primary drainage channels.**

3           **Sec. 7. (a) If:**

- 4           **(1) a person who owns a tract of land seeks the removal of a**
- 5           **storm water nuisance; and**
- 6           **(2) the owner of the land on which the storm water nuisance**
- 7           **is located does not remove the storm water nuisance upon**
- 8           **request;**

9           **the person seeking the removal may file a request under this**  
10           **chapter asking the county surveyor, city board of works, or town**  
11           **council of the city or town in which the alleged storm water**  
12           **nuisance is located, or designee of the county surveyor, city board**  
13           **of works, or town council, to investigate the storm water nuisance.**

14           **(b) The request must be filed on a form published by the county**  
15           **surveyor, city board of works, or town council, or designee of the**  
16           **county surveyor, city board of works, or town council, that**  
17           **includes:**

- 18           **(1) a general description of the tract of land owned by the**
- 19           **person making the request;**
- 20           **(2) a general description of the site of the nuisance; and**
- 21           **(3) a general explanation of the need for the removal of the**
- 22           **nuisance.**

23           **Sec. 8. (a) An ordinance may be adopted to allow for the**  
24           **payment of a fee to the county surveyor, city board of works, or**  
25           **town council, or designee of the county surveyor, city board of**  
26           **works, or town council, as a condition of filing a request under this**  
27           **chapter. The fee shall not be an amount greater than is reasonably**  
28           **necessary to defray the expenses incurred in processing the**  
29           **request, conducting the investigation, and completing the**  
30           **assessment under this section.**

31           **(b) The county surveyor, city board of works, or town council,**  
32           **or designee of the county surveyor, city board of works, or town**  
33           **council, of the city or town in which the storm water nuisance is**  
34           **alleged to exist shall investigate and make a visual assessment**  
35           **limited to the following:**

- 36           **(1) Determine whether the storm water nuisance exists.**
- 37           **(2) Assess whether the removal of the storm water nuisance**
- 38           **will:**

1           **(A) remove the negative effect of the storm water nuisance**  
 2           **from the land of a person making the request; and**

3           **(B) cause unreasonable damage to the land on which the**  
 4           **storm water nuisance is located.**

5           **(3) Make any other observations that may be useful in solving**  
 6           **an alleged storm water nuisance problem.**

7           **(c) The county surveyor, city board of works, or town council,**  
 8           **or designee of the county surveyor, city board of works, or town**  
 9           **council, upon making the assessment under subsection (b), shall**  
 10           **provide the following to a person that filed the request under**  
 11           **section 7 of this chapter:**

12           **(1) An oral or written report that may include:**

13           **(A) a general description of the investigation and its**  
 14           **findings;**

15           **(B) whether the storm water nuisance exists;**

16           **(C) the need for the removal of the storm water nuisance;**

17           **(D) whether the removal of the storm water nuisance will:**

18           **(i) remove the negative effect of the storm water**  
 19           **nuisance from the land of a person that filed the request**  
 20           **under section 7 of this chapter; and**

21           **(ii) cause unreasonable damage to the land on which the**  
 22           **storm water nuisance is located; and**

23           **(E) any other considerations that may be useful in solving**  
 24           **the storm water nuisance.**

25           **(2) Information concerning alternative dispute resolution**  
 26           **options.**

27           **(d) The county surveyor, city board of works, or town council,**  
 28           **or designee of the county surveyor, city board of works, or town**  
 29           **council, is not required to use funds to meet the requirements**  
 30           **under this chapter.**

31           **(e) Except under subpoena, the county surveyor, city board of**  
 32           **works, or town council, or designee of the county surveyor, city**  
 33           **board of works, or town council, shall not be compelled to testify**  
 34           **in a legal proceeding related to its functions under this chapter.**

35           **(f) For purposes of this chapter, the county surveyor, city board**  
 36           **of works, or town council, or designee of the county surveyor, city**  
 37           **board of works, or town council, has a right of entry as provided**  
 38           **by IC 36-9-27.4-25.**

1           **(g) An artificial conveyance that was constructed and that**  
2           **operates in compliance with a permit issued by a political**  
3           **subdivision is not subject to the provisions of this chapter."**

4           Page 4, delete lines 7 through 42.

5           Delete pages 5 through 11.

6           Re-number all SECTIONS consecutively.

(Reference is to HB 1291 as introduced.)

**and when so amended that said bill do pass.**

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Representative Eberhart